



Application Serial No.: 09/898,164
Attorney Docket No.: 0260123

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: **Haseltine, et al.**

Application Serial No.: **09/898,164**

Filed: **July 2, 2001**

For: **Processes for Exploiting Electronic
Tokens to Increase Broadcasting
Revenues**

Art Unit: 3622

Examiner: Champagne, Donald L.

APPEAL BRIEF

Mail Stop Appeal Brief – Patents
Honorable Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir/Madam:

This is an Appeal from the Examiner's Final Rejection of claims 1-2, 4, 8, 10-13, 38-45, 58, 61, 65 and 68. The Final Rejection issued on November 5, 2007, and the Advisory Action issued on January 16, 2008. The Notice of Appeal was filed in the U.S. Patent and Trademark Office on February 5, 2008.

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REAL PARTY IN INTEREST

The real party in interest is Disney Enterprises, Inc.

RELATED APPEALS AND INTERFERENCES

There are no related Appeals or Interferences.

STATUS OF CLAIMS

Claims 1-2, 4, 8, 10-13, 38-45, 58, 61, 65 and 68 are pending, and claims 3, 5-7, 9, 14-37, 46-57, 59-60, 62-64, 66-67 and 69-72 were canceled in previous amendments. Claims 1-2, 4, 8, 10-13, 38-45, 58, 61, 65 and 68 have been finally rejected in a Final Rejection, dated November 5, 2007. This Appeal is directed to the rejection of claims 1-2, 4, 8, 10-13, 38-45, 58, 61, 65 and 68. Claims 1-2, 4, 8, 10-13, 38-45, 58, 61, 65 and 68 appear in an Appendix to this Appeal Brief.

STATUS OF AMENDMENTS

No claim amendments have been entered after issuance of the Final Rejection of November 5, 2007. Appellant cancelled claims 62-64 and 69-72 in response to the Final Rejection of November 5, 2007.

SUMMARY OF CLAIMED SUBJECT MATTER

A. Brief Summary

The present application provides systems and methods for broadcasting and utilizing electronic tokens that are embedded in programming broadcast signals. The programming broadcast signals are received by broadcast receiving appliances, which provide the electronic tokens to token capture devices (TCDs) in possession of consumers.

Upon receipt of the electronic tokens by the TCD, the TCD processes and stores the electronic tokens, which will be of value to the consumer. For example, the electronic tokens may cause the TCD to light up, indicating that the consumer has won a prize. A TCD having indication of token receipt thereon may then be redeemed by the consumer for a prize, thus generating incentive for viewing the broadcast and using the TCD to capture the electronic tokens embedded therein.

The electronic tokens may make their way to the TCDs through a chain that begins with the electronic tokens being embedded into the audio signal of either a live or stored program. After embedding, the electronic tokens may be transmitted along with the primary audio signal, which is received by a user's broadcast receiving appliance (e.g. television, radio or computer), and then transmitted either in the electromagnetic or acoustic spectrum from the broadcast receiving appliance in such a manner that the TCD's sensor picks up the electronic tokens and passes them to TCD decoder for processing. (See Paragraph 17 of the Patent Application.)

Electronic tokens may be delivered to broadcast appliances, such as televisions, radios, computers and the like, in conjunction with programming contained in the live stream. For example, as indicated at block 324 of FIG. 3, a live stream is identified, and electronic tokens are embedded therein, shown at block 326. The electronic tokens may be embedded, for example, in the audio stream of the live stream. The broadcast and electronic tokens are then broadcast to a consumer, either live, as indicated at block 328, or from broadcast storage, as indicated at block 330, or a combination of the two. The embedded electronic tokens are also transmitted, as indicated at 332, and received by the consumer's broadcast receiving appliance (television, radio, computer, etc.), shown at block 334. The broadcast receiving appliance radiates the token, shown at 336. For example, if the token is encoded as an audio signal, a consumer's television would radiate the token as part of the acoustic spectrum, preferably outside of a normal hearing frequency range. (See Paragraph 29 of the Patent Application.)

The TCD is programmed to receive the electronic tokens, for example, audio tokens, from a viewer's TV or a listener/s radio set, which is emitting a programming broadcast signal, and to display the results of these token captures to the viewer or listener and to an associated product redemption staff. (See Paragraph 15 of the Patent Application.)

A. Claim 1

Independent claim 1 claims a method for providing incentive to a user to receive information. The method comprises providing a programming broadcast signal (332) to a broadcast receiving appliance (334); providing a token embedded in an audio signal of the programming broadcast signal (326, 338); receiving, by the broadcast receiving appliance, the token embedded in the audio signal of the programming broadcast signal (336); emitting, by the broadcast receiving appliance, the audio signal including the token from the broadcast receiving appliance (336), wherein the token is emitted outside of a normal hearing frequency range of an acoustic spectrum of the audio signal; providing a token capture device (306) configured to receive the token during the emitting of the programming; and providing an incentive for using the token capture device to receive the token.

B. Claim 38

Independent claim 38 claims a system for providing incentive to receive advertising using a token associated with a broadcast signal. The system comprises a broadcast receiving appliance (334, 336) operable to receive the broadcast signal including a token, wherein the token is embedded in an audio signal of the broadcast signal (326, 338); the broadcast receiving appliance (334, 336) operable to emit the audio signal including the token; a token capture device (306) configured to receive the token emitted from the broadcast receiving appliance outside of a normal hearing frequency

range of an acoustic spectrum of the audio signal; a means for providing incentive to a token capture device user to cause the token capture device to receive the token signal.

C. Claim 58

Independent claim 58 claims a method for providing an incentive to a user to receive information. The method comprises receiving a programming broadcast signal (334); receiving a token as part of the programming broadcast signal (334), wherein the token provides the incentive, and wherein the token is embedded in an audio signal of the programming broadcast signal (326, 338); and emitting an audio signal including the token outside of a normal hearing frequency range of an acoustic spectrum of the audio signal (336).

D. Claim 65

Independent claim 65 claims a broadcast receiving system for providing an incentive to a user to receive information. The broadcast receiving system comprises a receiver (334) operable to receive a programming broadcast signal including a token embedded in the audio signal of the programming broadcast signal, wherein the token provides the incentive; and a transmitter (336) operable to emit the audio signal including the token outside of a normal hearing frequency range of an acoustic spectrum of the audio signal.

GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

A. Claims 1, 2, 4, 8, 11, 38, 41-45, 58, 61, 65 and 68 are rejected, under 35 USC § 103(a), as being unpatentable over Lappington, et al. (USPN 5,638,113) (“Lappington”) in view of Brusky, et al. (USPN 5,903,259) (“Brusky”).

B. Claims 10, 12, 13, 39 and 40 are rejected, under 35 USC § 103(a), as being unpatentable over Lappington in view of Brusky, and further in view of Mankovitz, et al. (USPN 5,523,794) (“Mankovitz”).

ARGUMENT

A. **Rejection of Claims 1, 2, 4, 8, 11, 38, 41-45, 58, 61, 65 and 68 under 35 USC § 103(a)**

The Examiner has rejected claims 1, 2, 4, 8, 11, 38, 41-45, 58, 61, 65 and 68, under 35 USC § 103(a), as being unpatentable over Lappington in view of Brusky. For the reasons stated below, Appellant respectfully disagrees.

1. **Lappington fails to disclose, teach or suggest that the audio signal includes the token**

In the Final Office Action of November 5, 2007, in rejecting claim 1, 38, 58 and 65, the Examiner states that Lappington discloses “emitting, by the broadcast receiving appliance, the audio signal including the token from the broadcast receiving appliance.” (See Page 4, Lines 5-6.) For the reasons explained below, Appellant respectfully submits that Lappington fails to disclose, teach or suggest this element of the claims.

Appellant respectfully submits that Lappington does not disclose that the audio signal, which is emitted from the broadcast receiving appliance, includes the token. In fact, Lappington clearly states that “Settop device 28 sends the interactive data by infrared transmission to handheld 32.” (Col. 9, lines 5-7.) In response to this distinction, in the Advisory Office Action of January 16, 2008, the Examiner states that Appellant has read Lappington selectively, and that:

Applicant argues (pp. 9-10) that the broadcast receiving appliance (set top box) does not emit the audio signal including token. Applicant notes that the token is “transmitted” by IR. However, col. 9 lines 10-12 (which was cited in Office action mailed on 5 November 2007, para. 8, for claim 72) teaches “radio communication”, which means audio emission, as an alternative to IR emission.

However, Appellant respectfully submits that “radio communication” does not mean “audio emissions.” As provided by Wikipedia, the online encyclopedia, “‘Radio’ is the transmission of signals, by modulation of electromagnetic waves with frequencies below those of visible light.” Thus, it is respectfully submitted that the definition of “radio communication” does not encompass “audio emissions.”

2. **Lappington fails to disclose, teach or suggest that the “programming broadcast signal,” which is provided to the broadcast receiving appliance, includes a token “embedded in an audio signal of the programming broadcast signal”**

It is respectfully submitted that for the Lappington’s system to function properly, it must have an extraction module at the settop box to extract the commercial data and another module for transmitting the commercial data using an infrared signal to a user

device. More specifically, Lappington, at col. 8, line 46 – col. 9, line 15, provides as follows:

Insertion Card 20 adds (or encodes) the interactive data to the VBI lines of television signal 16, and sends the encoded television signal 22 to a transmitter, all at the direction of data insertion control 14. Data insertion control 14 is responsible for processing, scheduling, time stamping and validation, as well as administrative functions associated with data insertion. Device driver 18 serves as an interface between Insertion Card 20 and data insertion control 14. In an alternative embodiment, rather than using the VBI lines, interactive data could be transmitted using the audio portion of a television signal, luminance, digital packets, radio communication or other appropriate mediums.

Encoded television signal 22 can be sent from satellite transmitter 24 and received by a satellite receiver 26. It is contemplated that satellite receiver 26 could be part of a cable system where the signal received by satellite receiver 26 is then sent via cable TV to home viewers. Instead of using a satellite and a cable system, the television signal could be broadcast using a standard television transmitter, transmitted using straight cable without satellites or transmitted with any other means for transmitting a television signal.

The signal received by satellite receiver 26 is sent to the home viewer where it is received by television set 30 and settop device/converter 28. Television 30 plays the original television program. Settop device 28 receives the encoded television signal and strips out the interactive data. Settop device 28 sends the interactive data by infrared transmission to handheld 32, which presents the interactive program to the home viewer. Thus, while the home viewer watches TV 30, the viewer can participate in the interactive program presented on handheld 32. Although infrared transmission is preferred, any other means for transmission will suffice; for example, radio communication or a wire. Transmission via infrared or radio is more efficient than a wire because many viewers, each with their own handheld, can participate simultaneously. (emphasis added.)

Therefore, Lappington discloses, teaches and suggests that the broadcast receiving appliance (or the settop box) extracts or strips the data embedded in the broadcast signal,

and the stripped data is then transmitted by the broadcast receiving appliance to the user device using an infrared transmission.

The significance of this excerpt is that Lappington's system requires an extraction module at the broadcast receiving appliance to extract the commercial data and another infrared module for transmitting the commercial data via an IR signal to a user device. In contrast, utilizing the invention of claims 1, 38, 58 and 65 of the present application, the broadcast receiving appliance avoids extracting the token from the broadcast signal and avoids encoding a transmission signal for transmitting the token to a user device, as the audio signal that is received broadcast receiving appliance includes the token. As a result, the broadcast receiving appliance can be simplified by eliminating an extractor for extracting the token and an encoder for encoding a transmission signal for transmitting the token to the user device.

In sharp contrast, Lappington discloses that "the interactive data" is encoded in the "VBI" (Vertical Blanking Intervals) lines of television signal 16. (Col. 8, lines 46-47.) Therefore, because the interactive data of Lappington is encoded in the VBI, Lappington teaches that the interactive data must be extracted first prior to transmission by the settop box, regardless of the means of transmission (infrared or audio) to the user device. In other words, simply replacing the means of transmission of the interactive data to the user device in Lappington (from IR to sounds), based on Brusky's teaching, does not result in the invention of claims 1, 38, 58 and 65, because the combination of Lappington and Brusky still requires the extraction of the interactive data by the settop box. In contrast,

in claims 1, 38, 58 and 65, the token is embedded in the audio signal of the programming broadcast signal received by the broadcast receiving appliance, which is then provided to the user device.

3. Brusky fails to disclose, teach or suggest that “the token is emitted outside of a normal hearing frequency range of an acoustic spectrum of the audio signal”

The Examiner has cited “inaudible sounds” at col. 8, line 2 of Brusky, as teaching that the interactive data encoded in the VBI lines of the television signal in Lappington can be “emitted outside of a normal hearing frequency range of an acoustic spectrum of the audio signal.” Appellant respectfully submits emissions outside of a normal hearing frequency range of an acoustic spectrum of the audio signal are not considered a “sound” to a human ear, and that “inaudible” refers to the volume of the transmitted “sound,” which is within the normal hearing frequency range of an acoustic spectrum of the audio signal. Therefore, an “inaudible sound” that is disclosed by Brusky as a replacement for IR, falls short of teaching a modification to the system of Lappington to replace IR transmission with the emission of the tokens “outside of a normal hearing frequency range of an acoustic spectrum of the audio signal.”

Accordingly, applicant respectfully submits that claims 1, 38, 58 and 65 are patentably distinguishable over Lappington in view of Brusky, and should be allowed. Further, claims 2, 4, 8, 11, 38, 41-45, 58, 61 and 68 depend from claims 1, 38, 58 and 65, and should also be allowed.

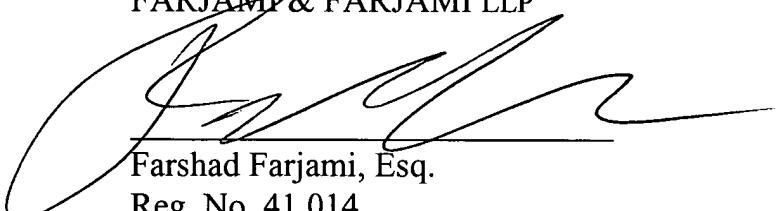
B. Rejection of Claims 10, 12, 13, 39 and 40 under 35 USC § 103(a)

The Examiner has rejected claims 10, 12, 13, 39 and 40, under 35 USC § 103(a), as being unpatentable over Lappington in view of Brusky, and further in view of Mankovitz. Appellant respectfully submits that claims 10, 12, 13, 39 and 40 depend from claims 1 and 38, respectively, and should also be allowed at least for the reasons stated above.

CONCLUSION

Based on the foregoing reasons, the present invention, as defined by independent claims 1, 38, 58 and 65, and claims depending therefrom, is patentably distinguishable over the art cited by the Examiner. Thus, claims 1-2, 4, 8, 10-13, 38-45, 58, 61, 65 and 68 pending in the present application are patentably distinguishable over the art cited by the Examiner. As such, and for all the foregoing reasons, an early allowance of claims 1-2, 4, 8, 10-13, 38-45, 58, 61, 65 and 68 pending in the present application is respectfully requested. This Appeal Brief is submitted herewith with an Appendix of the appealed claims and the requisite fee for filing the Appeal Brief.

Respectfully Submitted,
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APPENDIX OF CLAIMS ON APPEAL

Claim 1: A method for providing incentive to a user to receive information, the method comprising:

providing a programming broadcast signal to a broadcast receiving appliance;

providing a token embedded in an audio signal of the programming broadcast signal;

receiving, by the broadcast receiving appliance, the token embedded in the audio signal of the programming broadcast signal;

emitting, by the broadcast receiving appliance, the audio signal including the token from the broadcast receiving appliance, wherein the token is emitted outside of a normal hearing frequency range of an acoustic spectrum of the audio signal;

providing a token capture device configured to receive the token during the emitting of the programming; and

providing an incentive for using the token capture device to receive the token.

Claim 2: The method according to claim 1, wherein the token capture device is further configured to process the token.

Claim 4: The method according to claim 1, wherein the programming broadcast signal embodies a television broadcast.

Claim 8: The method according to claim 1, wherein the programming broadcast signal embodies a radio broadcast.

Claim 10: The method according to claim 1, wherein the incentive comprises providing a reward in exchange for redemption of a token capture device having indication thereon of a received token signal.

Claim 11: The method of claim 1, wherein the information is advertising.

Claim 12: The method according to claim 10, further comprising collecting personal information from a person during the redemption of the token capture device.

Claim 13: The method according to claim 12, further comprising: storing the collected personal information; and using the stored collected personal information in a demographic analysis.

Claim 38: A system for providing incentive to receive advertising using a token associated with a broadcast signal, the system comprising:
a broadcast receiving appliance operable to receive the broadcast signal including a token, wherein the token is embedded in an audio signal of the broadcast signal;

a broadcast receiving appliance operable to emit the audio signal including the token;
a token capture device configured to receive the token emitted from the broadcast receiving appliance outside of a normal hearing frequency range of an acoustic spectrum of the audio signal;
a means for providing incentive to a token capture device user to cause the token capture device to receive the token signal.

Claim 39: The system according to claim 38 wherein the incentive comprises allowing redemption of a token capture device having indication thereon of a received token.

Claim 40: The system according to claim 39 wherein the redemption comprises exchange of the token capture device having indication thereon of the received token for a prize.

Claim 41: The system according to claim 38 wherein the broadcast signal comprises an advertisement.

Claim 42: The system according to claim 38 wherein the broadcast signal embodies a television program.

Claim 43: The system according to claim 38 wherein the broadcast signal embodies a motion picture film.

Claim 44: The system according to claim 38 wherein the broadcast signal embodies a radio program.

Claim 45: The system according to claim 38 wherein the broadcast signal embodies a computer software program.

Claim 58: A method for providing an incentive to a user to receive information, the method comprising:

receiving a programming broadcast signal;

receiving a token as part of the programming broadcast signal, wherein the token provides the incentive, and wherein the token is embedded in an audio signal of the programming broadcast signal; and

emitting an audio signal including the token outside of a normal hearing frequency range of an acoustic spectrum of the audio signal.

Claim 61: The method of claim 58, wherein the programming broadcast signal includes a television broadcast.

Claim 65: A broadcast receiving system for providing an incentive to a user to receive information, the broadcast receiving system comprising:

a receiver operable to receive a programming broadcast signal including a token embedded in the audio signal of the programming broadcast signal, wherein the token provides the incentive; and

a transmitter operable to emit the audio signal including the token outside of a normal hearing frequency range of an acoustic spectrum of the audio signal.

Claim 68: The broadcast receiving system of claim 65, wherein the programming broadcast signal includes a television broadcast.

EVIDENCE APPENDIX

(NONE)

RELATED PROCEEDINGS APPENDIX

(NONE)